United Nations CAT/C/IRQ/CO/1

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
7 September 2015

Original: English

Committee against Torture

Concluding observations on the initial report of Iraq*

1. The Committee against Torture considered the initial report of Iraq (CAT/C/IRQ/1) at its 1332nd and 1335th meetings, held on 29 and 30 July 2015 (see CAT/C/SR.1332 and 1335), and adopted the following concluding observations at its 1349th and 1350th meetings, held on 11 and 12 August 2015.

A. Introduction

2. The Committee welcomes the submission of the initial report of Iraq and the information contained therein. It regrets, however, that the report does not follow generally the Committee's guidelines on the form and content of initial reports (CAT/C/4/Rev.3) and that it lacks statistical and practical information on the implementation of the provisions of the Convention.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party's delegation and the responses provided to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee notes with satisfaction that in the period since the entry into force of the Convention for the State party in 2011, Iraq acceded to the Convention on the Rights of Persons with Disabilities, on 20 March 2013.

5. The Committee welcomes the following legislative measures taken by the State party in areas of relevance to the Convention:

(a) The adoption of Act No. 28 (2012) on combating trafficking in persons;

(b) The adoption of Act No. 8 (2011) on domestic violence in the Kurdistan Region.

6. The Committee takes note of the State party's initiatives to amend its policies and procedures in order to afford greater protection of human rights and to apply the Convention, in particular, the adoption in 2011 of a national action plan on human rights.

* Adopted by the Committee at its fifty-fifth session (27 July to 14 August 2015).

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7. The Committee welcomes the creation, in April 2012, of the High Commission for Human Rights as the Iraqi national human rights institution.

8. The Committee commends the State party for having admitted hundreds of thousands of refugees and asylum seekers, mostly Syrians fleeing from the armed conflict in their country.

9. The Committee notes with appreciation that the State party issued in 2010 a standing invitation for visits by the special procedures mechanisms of the Human Rights Council. It notes that some of these mechanisms have already visited the country and hopes additional mandate holders will visit it in the future.

C. Principal subjects of concern and recommendations

Absolute prohibition of torture

10. The Committee is concerned that there is no clear provision in the State party's legislation to ensure that the prohibition against torture is absolute and non-derogable (art. 2 (2)).

The State party should ensure that the principle of the absolute prohibition of torture is incorporated into its legislation and ensure its strict application, in accordance with article 2 (2) of the Convention, which stipulates that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. In this connection, the Committee draws the attention of the State party to paragraph 5 of its general comment No. 2 (2007) on the implementation of article 2 by States parties, in which it states, inter alia, that exceptional circumstances also include any threat of terrorist acts or violent crime, as well as armed conflict, international or non-international. In addition, the Committee states in the same general comment that it rejects any religious or traditional justification that would violate that prohibition.

Armed conflict, acts of terrorism and violations of the Convention

11. The Committee deplores the severe human rights violations committed by the so-called Islamic State in Iraq and the Levant (ISIL) and associated armed groups, which may amount to war crimes, crimes against humanity and possibly genocide, as stated in the report prepared by the Office of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution S-22/1 (see A/HRC/28/18, para. 78).

12. Recalling the Convention's absolute prohibition of torture and the State party's obligations thereunder, the Committee is deeply concerned at the information contained in the above-mentioned report regarding serious human rights violations by the Iraqi security forces and affiliated militia groups in the conduct of military operations. These include grave violations of the Convention, such as torture and ill-treatment, enforced disappearances and extrajudicial killings of prisoners and civilians (ibid., paras. 50-61) (arts. 1, 2, 12, 14 and 16).

The Committee recommends that the State party:

(a) **Undertake prompt, thorough and impartial investigations into all allegations of torture and other ill-treatment, including enforced disappearances and summary executions, committed on any territory under its jurisdiction;**

(b) **Continue to keep thorough documentation on the victims of inhuman treatment in areas not under governmental control, on the type of violations of the Convention against them and the damage inflicted, as well as on the identity, if**

possible, of the alleged perpetrators, so that the State party can fully exercise its duties under the Convention when effective control is re-established and ensure that those found responsible are prosecuted and held accountable;

(c) **Ensure that the alleged perpetrators of and accomplices to torture, including persons in positions of command, are duly prosecuted and, if found guilty, given penalties commensurate with the grave nature of their acts. Recalling the principle embodied in article 2 (3) of the Convention, that an order from a superior or a public authority may not be invoked as a justification for torture, the Committee draws the State party's attention to paragraph 26 of its general comment No. 2 on the subject;**

(d) **Provide effective remedies and redress to victims, including fair and adequate compensation, and as full rehabilitation as possible, in accordance with the Committee's general comment No. 3 (2012) on the implementation of article 14 of the Convention by State parties.**

Conflict-related sexual violence

13. The Committee is particularly concerned about reports of ISIL fighters raping female captives, and about the fact that this extremist group has instituted a pattern of sexual violence, slavery, abduction and human trafficking targeted at women and girls belonging to religious and ethnic minorities (see S/2015/203, paras. 28-31). It is equally concerned by reports of sexual violence committed by members of the Iraqi army and militias on all sides of the conflict. The Committee is further concerned at the apparent impunity enjoyed by the perpetrators of such acts (arts. 1, 2, 4 and 16).

The State party should take vigorous measures to promote the protection of women and eliminate the impunity enjoyed by the perpetrators of acts of sexual violence in the context of the armed conflict, whether they are State officials or non-State actors; conduct prompt, impartial and thorough inquires; try the perpetrators of such acts and, if they are found guilty, sentence them to punishment commensurate with the gravity of their acts; and provide adequate redress to victims, including those fleeing ISIL-controlled areas, in particular ensuring that women fleeing such violence have access to shelter, medical and psychological care and rehabilitation and public services, and are able to access such services without discrimination on the basis of gender or other status.

Fundamental legal safeguards

14. The Committee takes note of the procedural safeguards set out in article 123 of the Code of Criminal Procedure (Act No. 23 of 1971), mainly the right to remain silent and the right to be represented by a lawyer before the investigating judge. It regrets, however, the lack of information provided on the measures and procedures in place to ensure the practical application of these and other fundamental legal safeguards to prevent torture and ill-treatment. In that respect, it has been reported that detainees are frequently deprived of timely access to a lawyer and a medical doctor, and of their right to notify a person of their choice. It is also concerned at allegations regarding the failure to maintain accurate registration records, to adequately inform detained persons about their rights and to adhere to the 24-hour limit for detainees to be brought before a judge (art. 2).

The State party should ensure that all detainees are afforded, by law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty, including the rights to be assisted by a lawyer without delay, to have immediate access to an independent medical doctor, regardless of any medical examination that may be conducted at the request of the authorities, to be informed of the reasons for arrest

and the nature of any charges against them in a language that they understand, to be registered at the place of detention, to inform promptly a close relative or a third party concerning their arrest, and to be brought before a judge without delay.

Allegations of torture and ill-treatment

15. The Committee welcomes the State party's categorical rejection of any form of torture, independent of who the perpetrators are. However, while taking note of the delegation's assurances that the practice of torture in Iraq is not of a systematic nature, the Committee remains deeply concerned by reports of routine and widespread use of torture and ill-treatment of suspects in police custody, as well as in pretrial detention centres run by the Ministry of the Interior and the Ministry of Defence, primarily to extract confessions or information to be used in criminal proceedings. The Committee is also concerned about allegations of torture and ill-treatment, including rape and other forms of sexual abuse, against women in custody — mostly Sunni Muslims —, who are frequently detained for allegedly "covering up" for their husbands or other male family members (arts. 1, 2, 4, 11-13, 15 and 16).

The Committee urges the State party to:

(a) **Ensure that all instances and allegations of torture and ill-treatment are investigated promptly, effectively and impartially, and that the perpetrators are prosecuted and convicted in accordance with the gravity of their acts, as required by article 4 of the Convention;**

(b) **Install and maintain video recordings of all interrogations and install video surveillance in all areas of custody facilities where detainees may be present, except in cases where detainees' right to privacy or to confidential communication with their lawyer or doctor may be violated. Such recordings should be kept in secure facilities and be made available to investigators, detainees and lawyers;**

(c) **Unambiguously reaffirm the absolute prohibition of torture and publicly warn that anyone committing such acts or otherwise complicit or acquiescent in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties;**

(d) **Discontinue the illegitimate practice of detaining and charging women for alleged crimes of their husband or other male family members, and institute disciplinary measures or criminal prosecution, as appropriate, against officials responsible for these abuses.**

Secret detention in cases involving security concerns

16. The Committee remains concerned at information pointing at a consistent pattern whereby alleged terrorists and other high-security suspects, including minors, are arrested without any warrant, detained incommunicado or held in secret detention centres for extended periods of time, during which they are severely tortured in order to extract confessions. According to allegations received by the Committee, the detention facility at the former Al-Muthanna military airport in West Baghdad, which was uncovered in 2011, is still open and continues to operate secretly under the control of the 54th and 56th Brigades of the army (arts. 2, 11, 12, 15 and 16).

The State party should:

(a) **Ensure that no one is detained in any secret detention centres, as these facilities are per se a breach of the Convention and should be closed. The Committee urges the State party to investigate and disclose the existence of any other such facility**

and the authority under which any of them has been established. It should also bring all legal detention facilities under the exclusive authority of the Ministry of Justice;

(b) **Ensure that all allegations of torture and ill-treatment brought forward by detainees in the former Al-Muthanna military airport be impartially investigated, the results made public, and any perpetrators responsible for breaches of the Convention be held accountable;**

(c) **Review the use of incommunicado detention with a view to its abolition.**

Conditions of detention

17. The Committee notes that the delegation acknowledged the difficult conditions in the State party's prisons, in particular overcrowding and poor sanitation. It takes note of the statement by the delegation that the State party is investing funds in expanding the penitentiary infrastructure and that preventive and sanitary measures are being taken to avoid contagious diseases, such as scabies (arts. 11 and 16).

The State party should take the measures necessary to alleviate the overcrowding of the penitentiary institutions and other detention facilities, including through the application of non-custodial measures.

Monitoring detention centres

18. The Committee notes with concern that the High Commission for Human Rights in practice is unable to make unannounced visits to detention facilities owing to the lack of an established framework for liaison between the national human rights institution and the line ministries. The Committee is also concerned that the High Commission is not granted access to facilities controlled by the Ministry of the Interior and the Ministry of Defence (arts. 2, 11 and 16).

The State party should guarantee that the High Commission for Human Rights is granted access to all places of detention and is able to carry out unannounced visits, in accordance with its mandate. The Committee invites the State party to ratify the Optional Protocol to the Convention.

Deaths in custody

19. The Committee remains concerned over allegations of death in custody as a result of torture. It notes that, despite the requests made to the State party's delegation to provide information on cases of deaths in custody that occurred during the period under review, no information has been received on this subject, nor on any investigations into such deaths (arts. 2, 11 and 16).

The State party should take measures to ensure that all instances of death in custody are promptly and impartially investigated by an independent body, and that those found responsible for deaths in custody that result from torture, ill-treatment or wilful negligence are brought to justice and, on conviction, adequately punished.

Death penalty

20. The Committee is concerned about the wide range of offences for which the death penalty is imposed, as well as the high execution rates in the State party. It is further concerned about the failure to fully respect and protect international and constitutional guarantees of due process and fair trial standards in death penalty cases (arts. 2 and 16).

The State party should ensure that if the death penalty is imposed it is only for the most serious crimes and in compliance with international norms. It should consider

taking measures for an immediate moratorium on executions and a commutation of sentences.

Impunity for acts of torture and ill-treatment

21. The Committee is concerned at reports indicating that complaints of torture and ill-treatment are rarely investigated, which creates a climate of impunity. In view of these reports, the Committee is concerned by the fact that, despite the Committee's questions, the State party has not furnished specific information on the number of complaints of torture or ill-treatment or on any corresponding investigations and prosecutions during the reporting period. It has also provided no information about the sentences and criminal or disciplinary sanctions imposed on offenders, nor has it indicated whether or not the alleged perpetrators of these acts were removed from public service pending the outcome of the investigation of the complaint. In the absence of this information, the Committee finds itself unable to assess the State party's actions in the light of the provisions of article 12 of the Convention (arts. 2, 12, 13 and 16).

The Committee urges the State party to:

(a) **Ensure that all complaints of torture or ill-treatment are promptly investigated in an impartial manner by an independent body, that there is no institutional or hierarchical relationship between that body's investigators and suspected perpetrators of such acts, and that the suspected perpetrators are duly tried and, if found guilty, are punished in a manner that is commensurate with the gravity of their acts;**

(b) **Ensure that the authorities launch investigations on their own initiative whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed;**

(c) **Ensure that alleged perpetrators of torture and ill-treatment are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, to commit reprisals against the alleged victim or to obstruct the investigation.**

Coerced confessions

22. While taking note of the legal safeguards enshrined in the Iraqi legislation establishing the inadmissibility of evidence obtained through torture or other ill-treatment, the Committee is concerned that, in practice, the admissibility of material obtained by torture is unduly onerous on the defendant. In that respect, it is reported that defendants rarely have medical reports to substantiate their claims, as they are denied access to doctors while in police custody. The Committee remains concerned about the apparent failure to investigate those allegations, and the lack of information available on decisions taken by the Iraqi courts to refuse confessions obtained under torture as evidence. Finally, there was no information provided on sanctions on judges being held accountable for failing to prosecute cases of torture (art. 15).

The State party must adopt effective measures to guarantee that coerced confessions or statements are inadmissible in practice, except when invoked against a person accused of torture as evidence that the statement was made. Thus, the Committee calls on the State party to ensure that where there is an allegation that a statement was made under torture, the burden of the proof is on the prosecution and the courts. The State party should also ensure that law enforcement officials, judges and lawyers receive training on how to detect and investigate cases in which confessions are obtained under torture. The competent authorities should take sanctions against

judges who fail to respond appropriately to allegations of torture raised during judicial proceedings.

Judicial system

23. The Committee is concerned about the reported lack of independence, impartiality and adequate training of the judiciary, which hinders the full enjoyment of human rights, such as the prohibition of torture and other cruel, inhuman and degrading treatment or punishment. It is also concerned about reports regarding questionable judicial practices under the Anti-Terrorist Law of 2005 and the Code of Criminal Procedure, such as arrests without warrants, protracted pretrial detention, indefinite detention of suspects, and convictions based on the testimony of secret informants (arts. 2 and 11).

The State party should ensure a fully independent, impartial and well-trained judiciary in conformity with the Bangalore Principles of Judicial Conduct and other relevant international standards. In particular, the State party should reform and strengthen the judiciary to effectively address issues of impunity, victim redress and due process, in line with the Convention and the commitment made by the State party during the universal periodic review in November 2014 (see A/HRC/28/14, paras. 127.145 and 127.222, and A/HRC/28/14/Add.1).

Gender-based violence

24. The Committee expresses its serious concern that gender-based violence, including rape, domestic violence and crimes committed in the name of "honour", remains pervasive in the State party. While welcoming the promulgation of Act No. 8 (2011) on domestic violence in the Kurdistan Region, the Committee notes with concern that the State party has not yet enacted comprehensive legislation to combat violence against women, including marital rape and so-called "honour" crimes. The Committee takes note of the explanation by the delegation that provisions in the Penal Code allowing for reduced sentences for "honour" crimes and the impunity of perpetrators of rape in cases where they marry the victim, which remain in law, are allegedly no longer being applied, despite the information from non-governmental sources to the contrary. It also notes with concern that only in the Kurdistan Region have local non-governmental organizations been permitted to run shelters for women fleeing violence and that non-governmental organizations seeking to maintain shelters in other parts of the territory have faced harassment and attacks by State and non-State actors (arts. 1, 2, 4 and 16).

The State party should:

(a) **Ensure that all cases of violence against women are thoroughly investigated, that perpetrators are prosecuted and that victims obtain redress, including fair and adequate compensation;**

(b) **Provide better protection and appropriate care for such victims, including access to safe houses, State-run and private shelters, identity documents without prior authorization of a male family member, medical care and psychological support;**

(c) **Increase cooperation with non-governmental organizations working to protect women and girls from violence throughout the country, and ensure that such organizations are protected from all forms of harassment and violence;**

(d) **Enact comprehensive legislation to combat domestic and gender-based violence, including a law permitting privately run shelters;**

(e) Repeal mitigating and exculpatory provisions in the Penal Code about rape and "honour" crimes (arts. 128, 130, 131 and 149), and act promptly to end impunity for rape and gender-based violence;

(f) Provide mandatory training on the prosecution of cases of gender-based violence for law enforcement and judicial officers, and facilitate victims' access to justice. It should also conduct public awareness-raising activities to change prejudicial attitudes towards women.

Violence against individuals on grounds of their real or perceived sexual orientation or gender identity

25. The Committee is concerned at reliable reports of attacks, some of which have resulted in deaths, against individuals perpetrated on grounds of their real or perceived sexual orientation or gender identity. According to the information before the Committee, these attacks occur regularly and with impunity. The Committee appreciates the State party's creation of a governmental commission for the rights of lesbian, gay, bisexual and transgender persons, but regrets the lack of information as to its concrete activities. It is also concerned by the report of the United Nations Assistance Mission for Iraq on human rights in Iraq issued in October 2012 (pp. 15-16) and other reports regarding the murder of young Iraqi "emos" (a teen subculture) on account of their identity (arts. 2, 4, 14 and 16).

The State party should take effective measures to prevent violence based on real or perceived sexual orientation and gender identity and ensure that all acts of violence are investigated and prosecuted promptly, effectively and impartially, perpetrators brought to justice and victims provided redress.

Refugees, non-refoulement

26. While taking note of the delegation's statement that the principle of non-refoulement is being applied practically, the Committee remains concerned at reports of inconsistent border policies. In this regard, it notes with concern that the existing legislation is inadequate for refugee protection. The Committee also takes note of the delegation's assurance that no attempts have been undertaken by the Iraqi authorities to expel former residents of Camp Ashraf, now temporarily located in the Camp Hurriya temporary transit location. Lastly, it regrets the lack of information provided by the State party on the number of cases in which refoulement, extradition and expulsion were carried out during the reporting period and on the number of instances in which it has not expelled persons in danger of being torture in the country of return (art. 3).

The Committee recommends that the State party:

(a) Strengthen its domestic legislative framework by adopting a comprehensive law on asylum consistent with international standards and in accordance with article 3 of the Convention;

(b) Ensure procedural safeguards against refoulement and effective remedies with respect to refoulement claims in removal proceedings, including review by an independent judicial body concerning rejections;

(c) Scrupulously respect the memorandum of understanding signed on 25 December 2011 with the United Nations, which explicitly recognizes that the former residents of Camp Ashraf benefit from the principle of non-refoulement.

The Committee encourages the State party to consider ratifying the Convention relating to the Status of Refugees, the Protocol relating to the Status of Refugees, the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

Definition and criminalization of torture

27. While taking note of the information provided by the delegation on the content and status of the draft law on torture, the Committee is concerned that a comprehensive definition of torture in conformity with the Convention, including torture for discriminatory purposes, is not yet contained in the domestic law. It is also concerned over the lack of clarity regarding the penalties associated with that crime (arts. 1 and 4).

The State party should define torture in full conformity with article 1 of the Convention, and ensure that such offences are punishable by appropriate penalties that take into account their grave nature, in accordance with article 4 (2) of the Convention. The Committee draws the State party's attention to its general comment No. 2, in which it states that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity (para. 9).

Universal jurisdiction

28. The Committee is concerned that torture and related crimes are not included in the list of offences indicated in paragraph 42 of the State party's initial report over which courts can exercise universal jurisdiction (arts. 5 and 8).

The State party should, in accordance with article 5 (2) of the Convention, take legislative measures and other measures necessary to establish its jurisdiction over crimes of torture and other related offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him or her.

Trafficking

29. While welcoming the adoption of Act No. 28 (2012) on combating trafficking in persons, the Committee notes with concern the increasing internal and cross-border trafficking of women and children in the State party as a result of the deteriorating security situation. It also expresses its concern at allegations, to which the State party did not respond, that traffickers post bail for incarcerated women to force them into prostitution through debt bondage. The Committee regrets the lack of information provided by the State party regarding the number of prosecutions, convictions and sentences of perpetrators of trafficking (arts. 2, 12 and 16).

The State party should:

(a) **Intensify its efforts to prevent and combat trafficking in human beings, including by implementing effectively the 2012 anti-trafficking legislation and by providing protection for victims, including shelters and psychosocial assistance;**

(b) **Conduct prompt and impartial investigations into cases of human trafficking, ensure that those found guilty of such crimes are punished with penalties appropriate to the nature of their crimes, and guarantee that all victims of such acts obtain redress;**

(c) **Ensure that victims of trafficking for forced sexual exploitation are not criminalized for prostitution-related offences;**

(d) **Ensure the systematic collection of data on trafficking flows to and in transit through the country.**

Training

30. While taking note of the existing training programmes on human rights for police officers, prison staff and judicial officers, the Committee remains concerned by the lack of

information on the impact of the training provided. It also regrets the lack of specific training provided to law enforcement officials, judges, prosecutors, forensic doctors and medical personnel dealing with detained persons on how to detect and document physical and psychological sequelae of torture and other cruel, inhuman or degrading treatment or punishment (art. 10).

The State party should:

(a) **Further develop mandatory training programmes to ensure that all public officials, in particular law enforcement officers, military personnel, prison staff and medical personnel employed in prisons and psychiatric hospitals, are well acquainted with the provisions of the Convention and are fully aware that violations will not be tolerated and will be investigated, and that those responsible will be prosecuted;**

(b) **Develop and apply a methodology for assessing how effective training programmes are in reducing the number of cases of torture and ill-treatment and in ensuring the investigation and prosecution of these acts;**

(c) **Ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).**

Redress and rehabilitation

31. While noting the State party's assertion that its legislation provides civil remedies for seeking redress in cases of torture and ill-treatment, the Committee regrets that the delegation did not provide information on reparation and compensation measures ordered by the courts or other State bodies and actually provided to victims of torture or their families since the entry into force of the Convention in the State party (art. 14).

The State party should immediately take legal and other measures to ensure that all victims of torture and ill-treatment are identified, obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. The Committee draws the State party's attention to its general comment No. 3, in which it elaborates on the nature and scope of State parties' obligations under article 14 of the Convention to provide full redress to victims of torture.

Follow-up procedure

32. The Committee requests the State party to provide, by 15 August 2016, follow-up information in response to the Committee's recommendations contained in paragraphs 11 (a), 12, 13 and 15 (a).

Other issues

33. The Committee encourages the State party to consider making the declaration under article 22 of the Convention, recognizing the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction.

34. The Committee recommends that the State party consider acceding to the Rome Statute of the International Criminal Court, and becoming party to the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts.

35. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

36. The Committee invites the State party to submit its next report, which will be its second periodic report, by 15 August 2019. To this end, the Committee invites the State party to agree, by 15 August 2016, to follow the optional reporting procedure in preparing that report. Under that procedure, the Committee will transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its second periodic report under article 19 of the Convention.